



Fighting for New Jersey's Environment: Civil and Criminal Enforcement

In 2005, Attorney General Harvey continued to make environmental protection a top law enforcement priority, defending public health and the quality of life of every citizen. Attorney General Harvey served as a national leader in the fight against air pollution by filing suit on behalf of 14 states against new rules of the federal Environmental Protection Agency that fail to adequately control dangerous mercury emissions from power plants.

The Attorney General used both civil litigation and criminal prosecution to combat pollution in New Jersey. Attorney General Harvey filed a civil action against W.R. Grace over asbestos contamination at the company's former plant in Mercer County. The Attorney General's Division of Law achieved a major victory in the New Jersey Supreme Court regarding public access to beaches.

The Environmental Crimes Bureau (ECB) in the Division of Criminal Justice aggressively implemented the Urban Environmental Initiative, established to prosecute polluters who use disadvantaged neighborhoods to dump waste, hazardous materials and industrial by-products, or who endanger surrounding communities and workers by the way they operate. The ECB worked closely in 2005 with officials in Paterson, Newark, Jersey City and Camden to address chronic dumping problems in each of those cities.

Civil Enforcement Mercury Lawsuit —

Attorney General Harvey filed suit in the U.S. Court of Appeals for the D.C. Circuit in May 2005 for 14 states, challenging a new federal Environmental Protection Agency rule that establishes a cap-and-trade system for regulating mercury emissions from power plants. The suit contends that the rule will delay meaningful emission reductions for decades and perpetuate hot spots of local mercury deposition, posing a grave threat to public health. The Attorney General previously sued EPA over a separate rule that removed power plants from the list of pollution sources subject to stringent pollution controls under the Clean Air Act. Mercury deposited in the environment is consumed by humans who eat certain fish, resulting in severe harm, particularly when ingested by pregnant or nursing mothers or young children. Children can suffer permanent brain and nervous system damage from exposure to even low levels of mercury, which frequently occurs in utero. Coal-fired power plants are the largest source of uncontrolled mercury emissions, generating 48 tons of mercury emissions per year nationwide.



Nancy Kaplen
Acting Director

Ms. Kaplen also served
as Acting First Assistant
Attorney General effective
December 1, 2005

Division of Law

Staffed by approximately 600 Deputy Attorneys General and 18 State Investigators, the Division of Law has broad civil powers and a broad-based mission. Through the Division, the Attorney General performs the majority of the duties relating to his statutory role as chief counsel for the State. The Division is charged with protecting the public interest by acting as sole legal counsel to State agencies, and by conducting all civil legal matters to which the State is party. The Division's workload is driven by its role as provider of legal counsel to client agencies on an as-needed basis, by the amount and nature of litigation brought against the State, and by the amount and nature of litigation pursued by various departments of State government. In the interest of maximizing the DOL's effectiveness, while also creating opportunities for staff growth and professional advancement, the DOL was reorganized in 2003 into practice groups. These practice groups were focused on such areas as Litigation, Appeals, Financial Fraud, Environmental Law, Civil Rights, Consumer Protection, etc. On an annual basis, the DOL typically handles more than 35,000 legal matters, including lawsuits, administrative hearings, appeals, workers compensation cases, the issuance of formal advice to government agencies, etc.

- Acting Director, Nancy Kaplen, AAG - Appellate Practice Group
- John P. Bender, Assistant Attorney General In Charge - Administrative Practice Group
- Aney K. Chandy, Assistant Attorney General In Charge - Civil Rights Practice Group
- Michael A. Shipp, Assistant Attorney General In Charge - Consumer Protection Practice Group
- Howard McCoach, Assistant Attorney General In Charge - DYFS Practice Group
- Lawrence E. Stanley, Assistant Attorney General In Charge - Environmental Law Practice Group
- Robert Romano, Assistant Attorney General In Charge - Financial Affairs Practice Group
- Stefanie Brand, Assistant Attorney General In Charge - Litigation Practice Group

www.nj.gov/oag/law

The New York Times States Challenge Break on Mercury for Power

By MICHELLE O'DONNELL

A coalition of 11 states, including New York, New Jersey and Connecticut,

When released in the air as a by-product of burning coal, mercury drifts over lakes and rivers and enters the food chain through fish and

emissions that can... the lawsuit, he... the cap-and-trade... ate "hot spots" a... that purchase u...

N.J. sues EPA for allowing trading of pollution credits

Attorney general calls mercury emissions rule flawed

By ANGELA DELLI SANTI
THE ASSOCIATED PRESS

TRENTON — A new federal rule that will allow mercury-emitting power plants to continue polluting by trading credits with cleaner plants is "deeply flawed" and will prevent serious environmental improvements, New Jer-

in 2010.

"The Clean Air Mercury Rule represents the first time the United States or any other country in the world has regulated mercury emissions from power plants and it will dramatically reduce mercury emissions by 70 percent," the statement reads. "EPA will vigorously defend the Clean Air

neys general are delaying the first-ever mercury regulations because they don't make reductions fast enough," Maisano said. "Historical experience shows us that cap-and-trade works better, faster and more efficiently."

After studying the health hazards posed by emissions from coal-fired power plants, the EPA

W.R. Grace Lawsuit —

In June 2005, Attorney General Harvey filed suit against W.R. Grace & Co. and two of its former executives alleging they falsely certified in 1995 that Grace had cleaned up hazardous asbestos contamination as required by state law at its Hamilton Township plant, which produced insulation from contaminated vermiculite ore from the company's mine in Libby, Montana. In fact, more than 15,000 tons of contaminated soil, some with concentrations of asbestos as high as 40 percent, remained at the site when Grace closed the plant. The suit seeks civil monetary penalties under state environmental laws. Attorney General Harvey appeared on ABC News Nightline on November 4 as part of a two-part series on W.R. Grace.

Beach Access Victory —

In July 2005, the Division of Law secured a major victory for public beach access in the New Jersey Supreme Court in the case of Raleigh Avenue Beach Association v. Atlantic Beach Club. The Division of Law successfully ar-

gued that the public trust doctrine, which provides that the public has a right to access the ocean for use and recreation, can extend to privately owned dry sand areas adjacent to the ocean. In a 5-2 decision, the Court held that under the facts of the case — a municipality with no public beaches, limited access to the ocean from residential neighborhoods, a demonstrated demand for beach access, and other factors — the public has a right to access and use the dry sand areas of the privately-owned beach club for a reasonable fee set by the Department of Environmental Protection.

ConocoPhillips Bayway Refinery —

In January 2005, Attorney General Harvey announced that New Jersey, the federal government and several other states reached a major settlement with ConocoPhillips Company requiring the company to install major new pollution controls at the Bayway Refinery in Linden and 10 other refineries throughout the U.S. The New Jersey Attorney General's Office and Department of Environmental Protection negotiated provisions that will require ConocoPhillips to spend \$60 million on pollution controls and upgrades at Bayway that will reduce odors and reduce the public's exposure to particles that cause asthma, cardiovascular disease and respiratory distress. The settlement will reduce Bayway's annual volatile organic compound emissions by more than 50 tons. Bayway currently emits more VOCs than the second- and third-largest New Jersey refineries combined.

Criminal Enforcement Environmental Crimes Bureau —

In 2005, the Environmental Crimes Bureau, within the Division of Criminal Justice, obtained more than 20 indictments, guilty pleas and/or accusations related to unlawful pollution. The ECB collected approximately \$600,000 in fines

and restitution in 2005. The Bureau charged individuals and corporations with such criminal offenses as criminal water pollution, unlawful transportation and abandonment of hazardous materials and unlawful disposal of solid waste. It completed statewide environmental crimes training for local police officers and code officials. In addition, the ECB provided training on environmental crimes, particularly solid waste dumping crimes, for county health officers throughout the State.

Among its significant environmental prosecutions in 2005, the ECB:

- ❖ Obtained a three-year prison sentence for a defendant who stole trailers, filled them with debris and abandoned them in Newark and Irvington.
- ❖ Obtained a three-year prison sentence for a defendant who unlawfully disposed of hundreds of used tires in Newark and Elizabeth.
- ❖ Indicted a contractor charged with performing four different asbestos abatement jobs in New Jersey without a Department of Labor license and abandoning solid waste and asbestos in a trailer near his business in Paterson.
- ❖ Indicted a defendant charged with unlawfully transporting lead-contaminated soil and abandoning it in a trailer on a Paterson street.
- ❖ Indicted a Jersey City municipal employee on charges that he unlawfully collected construction/demolition debris from two separate sites and dumped it at a city lot.
- ❖ Indicted a man charged with dumping two truckloads of demolition debris on vacant lots in Camden.
- ❖ Obtained a three-year probationary sentence, conditioned upon serving 120 days in jail and payment of \$32,500 in cleanup costs, against a man who abandoned a trailer containing barrels of waste oil in Elizabeth.
- ❖ Obtained a three-year probationary sentence, conditioned upon serving 364 days in jail and paying a \$45,000 fine, against the president of a concrete fabricating company that discharged highly acidic wastewater into a wooded area in Newfield, Gloucester County.

Asbestos suit asks for \$1.6B

State: W.R. Grace made false claims; criminal charges eyed

By TRACEY L. REGAN and DARRYL ISHERWOOD
Staff Writers

■ Legal woes continue to mount for W.R. Grace officials. A6

TRENTON — State Attorney General Peter Harvey is seeking up to \$1.6 billion in penalties from construction products maker W.R. Grace & Co. and two company executives for allegedly violating state environmental laws at a plant the company operated in Hamilton for more than three decades.

The state's top prosecutor filed a civil suit against W.R. Grace in Superior Court yesterday that accuses the company of submitting "false or misleading" information to state regulators about the asbestos-tainted vermiculite it processed at the fireproofing and insulation plant beginning in 1963.

The suit, filed under two New Jersey environmental laws, says the company knew it released hazardous concentrations of tremolite asbestos at the site but falsely claims a 1995 environmental report submitted to state regulators had handled only trace amounts and that the company was cleaning the site.

The state is seeking monetary fines for the alleged violations plus \$150,000 a day for each day it asserts the defendants — the company and the two Grace executives who certified the 1995 report as "true, accurate and complete" — failed to correct the report.

J. Battacchi, a high-ranking corporate executive.

"In 1995, Grace filed reports claiming there was minimal trace amounts of asbestos contamination at the site in Hamilton, and Grace — and Grace executives — knew this was true," Harvey said yesterday.

"They knew this contamination had long-term health consequences for the residents of Hamilton," he added.

Harvey said yesterday he is exploring the possibility of filing criminal charges against the executives.

Oil company signs cleanup pact for Bayway Refinery in Linden

BY ALEXANDER LANE
STAR-LEDGER STAFF

The massive Bayway Refinery in Linden, N.J., signed the pact

along with the state, signed the deal.

"New Jersey believes this

of an environmental group called the Environmental Integrity Project — is an advanced new pollution control on the refinery's catalytic converter.

That's the workhorse of the refinery," Schaeffer said. "That's where they pound the crude with chemicals and heat to try to squeeze out more gasoline and other products."

Schaeffer, who has been critical of the Bush administration's enforcement of pollution laws against industrial polluters, applauded the deal but expressed some

N.J. sues EPA for allowing trading of pollution credits

Attorney general calls mercury emissions rule flawed

By ANGELA DELLI SANTI
THE ASSOCIATED PRESS

in 2010.

"The Clean Air Mercury Rule represents the first time the United States ever has a mercury

emissions general are delaying the first-ever mercury regulations because they don't make reductions